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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,373	09/12/2005	Joan Schnieber	02280.003420.	4712

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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/524,373	SCHNIEBER ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 September 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/10/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 6, 8 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is vague and indefinite because it is not clear how claim 6 further limit claim 1 when it is broader in scope than claim 1. Claim 1 recites that the outer layer is a dough layer, but claim 6 recite that the dry component is fat bases, dairy based, protein based, grain based which does not necessarily form a dough layer. Furthermore, the use of the term " based" is unclear because it is not known what kind of product is included. By fat based, is the dry component made only of fat or have high percentage of fat or what?

Claim 8 is vague and indefinite; what does applicant mean by at least a portion? There is only one dry component; does applicant mean the ingredients that are used to make the component being roasted. If so, what is the ingredient that is roasted because several ingredients are used in the dry component?

Claim 13 is vague and indefinite. It is not clear what is being claimed. The dough layer is formed by the liquid component and the dry component; thus, what does applicant mean by the dough layer being selected from the group such as cracker, cookie, muffin etc..

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,3,6,9,11,12,15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Lanner et al (5433961)

Lanner et al disclose a process for continuously preparing edible cores with a dough coating thereon. The edible cores are coated by repeatedly tumbling through both wet zones and dry zone within a tumbling bed. The process comprises the steps of spraying the surface of the tumbling bed with a hydrating liquid and by dusting the surface of the bed with farinaceous powder. The liquid and powder are applied at rates which are suitable to form on the cores a dough-coating comprising starch, flour and sugar. In the spraying step, the edible cores in the tumbling bed rotate repeated hydrated with a hydrating liquid, which can be 100% water. Other materials such as corn syrup, honey, high fructose corn syrup, seasoning, salt, modified pregelatinized starch, gums, flavoring, maltodextrin, oil/shortening , coloring and dairy products etc.. can be added. Farinaceous dough means material comprising flour and water that when cooked is expandable into a crisp material. The farinaceous powder comprises 20-100% flour and 0-50%, pregelatinized modified waxy starch. Suitable flours include nut flour, wheat, rice, oats or mixtures thereof. The farinaceous can also contain seasoning, flavoring, leavening agents, sugar or other fine particulates that can adhere to the edible cores. After emerging from the tumbling bed, the dough coated-edible cores are then cooked until crisp. The cooking can involve conventional baking, microwaving or frying. Preferably, the cooking involves a continuous baking operation at 220-400 degree F for 10-60 minutes. Optionally, the coated edible cores can be further treated or coated with salt, oil, starch and/or gum solutions, sugar, seasoning,

flavorants etc.. Suitable cores include peanuts, seeds, beans, fruits, meats, cereals etc.. The coating represents from about 15-70% by weight of the coated edible. The examples show the dough coating contains less than 50% sugar.(see col. 2 lines 21-38, col. 3 line 59 through col. 4 line 66, col. 5 line 60 through col. 6 line 65, col. 7 lines 1-58 and the examples.)

Lanner et al disclose a method and edible snack as claimed. Since the core material, the dough layer and the method steps are the same as claimed, it is inherent the water activity of the snack, the outer dough layer and the core will be within the ranges claimed. Since the snack product is the same as in claim 15, it is inherent the product will have the same microbial stability as claimed.

Claims 1-4, 6, 11-12, 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Werner et al (4663175).

Werner et al disclose a method for making a flavored nut product. The method comprises the steps of coating a liquid mixture containing water, sugar and tapioca onto the nuts, adding a solids mixture containing flour, oil,modified corn starch, sugar and salt and flavoring onto the liquid coated nuts, drying the solids coated nuts and then cooking the coated nuts. The steps of coating with liquid, coating with solid and drying are then repeated until the desired thickness of coating is obtained. Other products such as corn, raisins, berries or other centers can also be coated. The solid mixture comprises 58% flour and 27% sugar. (see columns 2-3)

Werner et al disclose a method and edible snack as claimed. Since the core material, the dough layer and the method steps are the same as claimed, it is inherent

the water activity of the snack, the outer dough layer and the core will be within the ranges claimed. Since the snack product is the same as in claim 15, it is inherent the product will have the same microbial stability as claimed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5,7-8,10,13,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lanner et al.

Lanner et al do not disclose the hydrating liquid containing glycerin, the dry component containing enzyme and emulsifier, roasting the dry component, freezing before baking, the outer dough as in claim 13 and the snack having dough layer containing enzyme emulsifier, yeast, and preservative as in claim 17.

Lanner et al disclose the hydrating liquid can contain sugars such as high fructose corn syrup, corn syrup etc. which are humectant sugars. Glycerin is a well known humectant. It would have been obvious to one skilled in the art to substitutute

one known additive for another to carry out the same function. Lanner et al disclose an outer dough layer; ingredients such as emulsifier and enzyme are known in the art to add to dough product to improve processing and organoleptic properties. It would have obvious to add known additives for their art-recognized functions. It would also have been obvious to add yeast to the outer dough layer depending on the type of dough and the flavor desired. It would have been obvious to add preservative to enhance the shelf life of the product; preservative is well known in the art for such function. It would have been obvious to freeze the coated core depending on the type of core and the period of consumption. If the core is a perishable product such as meat, vegetable, it would have been obvious to freeze the product after coating for long term storage if the product is not consumed in a short period of time. It would have been obvious to roast the dry component such as flour, starch when a roasted flavor is wanted. This would have been an obvious matter of preference.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lanner et al in view of Hebert et al

Lanner et al do not disclose a liquid base comprising flour and yeast.

Hebert et al disclose a process for coating nut; they teach to use yeast as a flavoring spice. (see col. 4 lines 27-30)

Lanner et al disclose the liquid can contain seasoning and flavoring.

It would have been obvious to add yeast because it is a known flavoring as shown by Hebert et al. Lanner et al disclose adding starch; it would have been obvious to exchange flour for starch because both are well known to be used interchangeably.

Claims 7,8,9-10,13 rejected under 35 U.S.C. 103(a) as being unpatentable over Werner et al.

Werner et al do not disclose the dry component containing enzyme and emulsifier, roasting the dry component, freezing before baking, the outer dough as in claim 13, baking the product, and the snack having dough layer containing enzyme emulsifier, yeast, chemical, agent, dough conditioner and preservative as in claim 17.

Werner et al disclose an outer dough layer; ingredients such as emulsifier and enzyme, dough conditioner are known in the art to add to dough product to improve processing and organoleptic properties. It would have obvious to add known additives for their art-recognized functions. It would also have been obvious to add yeast and chemical leavening agent to the outer dough layer depending on the type of dough and the flavor desired. It would have been obvious to add preservative to enhance the shelf life of the product; preservative is well known in the art for such function. It would have been obvious to freeze the coated core depending on the type of core and the period of consumption. If the core is a perishable product such as fruit, it would have been obvious to freeze the product after coating for long term storage if the product is not consumed in a short period of time. It would have been obvious to roast the dry component such as flour, starch when a roasted flavor is wanted. This would have been an obvious matter of preference. While Werner et al teach frying, it would have been obvious to bake when desiring a lower fat content. One skilled in the art can readily determine the time and temperature.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Werner et al in view of Hebert et al

Werner et al do not disclose a liquid base comprising yeast.

Hebert et al disclose a process for coating nut; they teach to use yeast as a flavoring spice. (see col. 4 lines 27-30)

Werner et al disclose the liquid can contain flavoring.

It would have been obvious to add yeast because it is a known flavoring as shown by Hebert et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 14, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794